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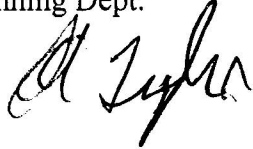
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**MEMORANDUM**

TO: Village of Trumansburg Mayor and Trustees

CC: Joan Jurkowich, Tompkins County Planning Dept.

FROM: David A. Tyler, Esq., Village Attorney 

RE: Draft Zoning Ordinance

DATE: March 29, 2012

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As requested, this memorandum contains my comments for your consideration before the public hearing in the above. Tuesday afternoon I met with Joan Jurkowich at the County Planning Department to discuss with her my questions and comments. I am sending her a copy of this memorandum so that everyone will be on the "same page". My comments are as follows:

**Section 110:** Joan will rework the language. "Greater weight" is a comparative term suggesting a baseline which is not expressed: greater than what? Perhaps the word "favor" could be substituted for "give greater weight to".

**Section 202:** This section fails to distinguish between area and use variances which are quite different and have quite different standards under the state statutes and law. Generally, the law looks favorably on extensions of area nonconforming properties but does not favor extensions of nonconforming property uses. I understand the concern for one or two nonconforming uses in the Village which now exist. As an example, you have the Millspaugh hardware and lumber business which has been an integral part of the community for many years, and you want to provide flexibility for this particular business. Bear in mind the language of the section would apply to ALL nonconforming uses. So there is a tension between this section and the planning philosophy that seeks to eliminate nonconforming uses over time. See for instance Sections 204 and 205. Again, Section 206 seems to be inconsistent with the philosophy mentioned above. Perhaps the alteration of a nonconforming building or reconstruction might better be provided for by a special exception from the Planning Board rather than a special permit from the Zoning Board of Appeals. A business like Millspaugh's would be protected without providing carte blanche for all nonconforming uses.

**Section 207:** There should be an extremely tight time limit for restoration of an unsafe structure to a safe condition, before it is condemned.

**Section 208:** This provision represents an anomaly to the usual benchmark of 50% or less in value of the property as a condition for the privilege of restoration. The 75% figure is highly unusual and flies in the face of the planning philosophy mentioned above under Section 202. I believe Joan has advised you on this point.

**Section 302:** I see no lot coverage criteria here, although there is one for accessory buildings under Section 303. Was this an intentional omission? I also note there are no lot coverage requirements in the East and West Commercial Districts (lot coverage being not germane in the Downtown Commercial District), although there is a lot coverage criteria in the Mixed-Use Industrial Zone. Again, was this intentional?

**Section 307, Exterior Lighting:** This provision states a desirable state of affairs, without any teeth, yet exterior lighting in a residential setting can be quite significant. This would be easier to address in situations where there is a site plan review, but not in the ordinary residential setting where there is no review other than the issuance of the building permit for new construction. Let Joan and I know if this issue needs to be addressed. It needs more thought.

**Section 308 (5):** See my comments below under Definitions on "Current Affordable Price".

**(10) b.:** If you think about it, "perpetuity" does not generally work well in human affairs. In several areas of law, there are flat prohibitions against it. I would recommend instead using a specific term of years, i.e. 50 or ?

**Section 309.3, Care Cottages:** Since this provision is modeled on the Better Housing for Tompkins County "Elder Cottages", why not mention this?

**Section 309.4 (3) (g):** I would suggest rewording the second line on annual permits for mobile home parks as follows: "... December 31 of that same year and must be renewed thereafter after review for compliance in accordance with the provisions of this ordinance."

**(8):** as well as manufactured home towbars and hitches, also require the wheels to be removed.

**Section 603, Conservation Overlay Districts:** Would this be an appropriate spot to have the Planning Board consider a special exception before conducting site plan review? I make the same suggestion for **Section 604, Stream Corridor Overlay District.**

Under **Section 702, Signs:** I can find no clear provision dealing with political signs. Given the freedom of speech issues, I would recommend they be permitted at all districts without a permit (Section 702.1) but with a strict time limit (90 days?), to be removed within a week of the election to which they are directed, or if political, but not connected to a particular election, then provide a specific time limit for removal. Restrictions on free expression must be "reasonable" and tied to promoting public health, safety and welfare.

**Section 811:** Add a heading: 'Planning Board Established' (analogous to the BZA heading at Section 806)

**Section 811.3 (4), Public Notice:** The notice posting for a minimum of five days should be seven business days, so that the notice will be on site at least one weekend before the meeting. Weekends are often the only meaningful daytime periods people have out and about in their neighborhoods. Also, it's not clear whether this posting time is with respect to the public hearing or some other meeting on the proposed site plan. The public hearing advertised notice is stated as at least five business days before the hearing, so the seven business days for posting dovetails nicely with the publication, given the required lead time for the newspaper to publish legal notices.

**(8) d.:** On disapproval of a site plan you provide, there must be a statement of "reasons for such decision". While necessary in that situation, it is also very necessary to have a statement of reasons for any final decision, such as one approving the site plan, approving it with conditions, or requiring revision and resubmission, which clearly articulate the Planning Board's rationale in each instance. Failing this, the whole procedure is open for Article 78 lawsuit claiming the decision was arbitrary and capricious. (This was the lesson from the Byrne Dairy case in which the decisions of the Planning Board were all upheld by the Court.) As I emphasized several times in that matter, it is critical to make a clear and full record of the issues and concerns of the Board leading to its decision, in case there is a Court review of the process.

**Section 812, Special Exceptions:** I'm going to suggest some additions to the language under paragraph 2, as follows: "Special Exceptions require the approval of the Planning Board in its sole discretion. All such cases are hereby declared to possess characteristics of such unique and special form that each specific case or use shall be considered as an individual case. Grant of a special exception is not "a right" for any applicant, and a denial of any application shall not be challengeable as arbitrary and capricious, so long as a reason is given for the decision. Granting of a special exception, or denial of it, is a basic function of planning for this community and is placed in the hands of the Planning Board which is comprised of a cross-section of the citizenry for this purpose."

This is not to say that a reasoned decision by the Planning Board on a special exception case is not important, while in fact it is just as crucial as any decision-making record by a public body.

Under the paragraph 2 provisions for a public hearing, would it not be advisable to notify neighbors and perhaps even post notice of the pending proceeding? There should be a provision for publication of notice analogous to site plan review (minimum time for publishing notice).

#### **Article X – Definitions:**

**31. Convenience Market:** make clear it is not a gas station (which is otherwise defined elsewhere).

**34. Current Affordable Price:** "published" by whom?

**43. Domestic Animals:** as I expressed to Joan the term "small animals" is broad and an invitation for trouble.

**46. Dwelling:** significance of "detached dwelling"?

**57. Fully Shielded Light:** Consider requiring it more broadly than just in the West Commercial District.

**73. c.:** Suggest wording “frequent, high-impact truck traffic” rather than “high-frequency high impact”.

**88. Manufactured Home:** Recognize that wheels may, and often are, removed when home is placed in a permanent location. (See comment on Section 309.4, above)

**97. Natural Gas Compression Facility:** This definition mentions natural gas or oil?

**173. Wetlands:** Joan tells me wetlands must be 2 acres or more to qualify under this ordinance - that’s two good sized building lots (just under 100,000 ft.<sup>2</sup>). This seems generous to me and certainly more than the Army Corps of Engineers treats as within its jurisdiction, traditionally.

There you have it. Please call me with any questions that occur to you prior the public hearing - I had not planned on being at the public hearing, but will be available Monday evening if you need me to be there. Let me know

Typically, with a new Zoning Ordinance, problems can be expected to show up over time. You should plan on revisiting this Ordinance in a couple of years to make clarifications and other “technical amendments” as needed.

P.S.: I presume the Zoning Map is now final.